

dates of the court order or other lawful authorization. Thus, if the FCC means to require records to be kept of the actual listening or recording times pursuant to a surveillance order, only the LEA actually conducting the surveillance is capable of providing this information.

The Commission inquires as to the information that carriers should be required to make available to LEAs on request. (NPRM, Paragraph 33.) SBC and other carriers historically have provided contact information, as well as other information specific to the preparations for actual surveillance, and existing procedures have proven effective over the course of many years. In any event, it is entirely unnecessary for carriers to be required to provide employees' personal information, such as date and place of birth and social security number, as suggested by the NPRM. An employee's name, title and contact number should be sufficient to authenticate the identity of the employee. (NPRM, Paragraph 33.)

Because the SBC companies already have policies and practices in place for employee conduct and record keeping, a requirement to submit their policies and procedures (or, preferably, a Statement of Compliance) for Commission review within 90 days from the effective date of the rules adopted here is acceptable. (NPRM, Paragraph 30.) SBC suggests that changes to CALEA-related policies and practices as a result of technological advances should be filed with the FCC within a reasonable time after the new policies and practices become effective.

V. The FCC Properly Concludes That It Should Defer Involvement With Technical Standards.

A. Delay May Require The FCC To Facilitate Standard-Setting In the Future.

As the FCC acknowledges in the NPRM, the industry, existing standards bodies and law enforcement continue to work on establishing CALEA standards. That process should be permitted to continue. The FCC should note, however, that continued delay in reaching standards may require the Commission to become actively involved in facilitating or accelerating these efforts to establish technical standards.

As noted previously herein, the dates originally set forth in CALEA for compliance are no longer realistic because of the delays that have occurred in the standards process, and also because of the FBI's years-long delay in providing a final capacity notice for initial CALEA implementation. SBC believes Congress should adjust the compliance dates accordingly; if, however, Congressional action is not forthcoming, the FCC must be prepared to provide extensions for carriers. The FCC should take into account the fact that, under existing technology limitations, at least 24 months will be required simply to develop switch software needed for carriers to meet CALEA's assistance capability requirements. SBC suggests that, if needed, the FCC grant "blanket" waivers for each major switching platform, or at least that extensions should be granted on a company wide basis, rather than separately for each switch. Waivers covering only individual switches would be burdensome to both the Commission and carriers.

B. Network Disclosure Requirements Are Not Triggered By CALEA-Related Network Modifications.

SBC interprets the FCC's network disclosure obligations as not requiring any disclosure of CALEA-related network changes. Section 251(c)(5) of the 1996 Act requires an incumbent LEC to disclose changes to its network that "will affect a competing service provider's performance or ability to provide service" or that "will affect the incumbent LECs interoperability with other service providers." 47 C.F.R. Sections 51.325(a)(1), (2). CALEA implicates neither of those two conditions. The CALEA requirements will instead involve providing the capabilities to allow law enforcement agencies to obtain properly authorized wiretaps, trap and trace devices, and pen registers on customer's lines; no use by any other entity or carrier is permitted, except to the limited extent specified in 18 U.S.C. §2511 and §3121. Installation of those capabilities (to the extent that they do not already exist) will not affect any other provider's service or any network interoperability. Indeed, as a matter of necessity, that capability must be transparent to all but the law enforcement agency in order to be effective. For similar reasons, likewise inapplicable are the network disclosure rules found at 47 C.F.R. Sections 64.702 and 68.110(b),¹³ and those contained in the Commission's Order on furnishing CPE.¹⁴ The FCC should confirm that

¹³ Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, CC Docket No. 86-79, 2 FCC Rcd 143 (1986).

¹⁴ Although the SBC LECs cannot conceive of any contemplated/foreseeable change that could trigger a network disclosure obligation, the FCC should grant to all carriers a limited exemption from such obligations to the extent that the FCC believes CALEA-related changes would otherwise be subject to disclosure. Such an exemption would be consistent with the needs of law enforcement to avoid public disclosure and availability of such CALEA changes. In fact, having network disclosures that are switch-specific -- as the FCC often requires -- on the Internet -- as the FCC encourages -- would defeat the stated

no network disclosure is required under the 1996 Act or its rules for CALEA-related changes.

VI. The Reasonably Achievable Standard Must Be Applied So As To Promote Equitable Reimbursement Of The Costs Of CALEA Implementation.

Congress intended for most initial costs of CALEA compliance to be equitably reimbursed as evidenced by the structure of §109 of CALEA. CALEA-related capability modifications to equipment, facilities or services deployed on or before January 1, 1995 must be funded by the Government. If not so funded, the carrier's existing equipment, facilities or services are deemed in compliance until they are replaced or undergo significant upgrade or major modification. CALEA-related modifications to equipment, facilities or services deployed after January 1, 1995, including those deployed to replace, significantly upgrade or modify existing equipment, facilities or services, are to be funded by the Government if the FCC determines they are not "reasonably achievable" according to CALEA §109's list of relevant factors.

In this context, the standard CALEA provides, i.e., whether compliance would impose significant difficulty or expense on carriers or users of carriers' systems, must be realistically interpreted. SBC would argue, for example, that due to delays in promulgation of industry standards and FBI capacity requirements, none of CALEA's requirements are reasonably achievable at

intent of the FBI to limit disclosure to a much higher level, (e.g., by county), in order to avoid compromising the confidentiality of lawful surveillance.

present; indeed, under existing technology constraints, the industry's ability reasonably to achieve compliance by October, 1998 is seriously in doubt.

The evaluation of "reasonably achievable" should be applied to equipment, facilities or services on a carrier-by-carrier basis, by each type of switch platform. All of the factors to be considered in the determination will be the same within these categories.

When considering the specific factors contained in Section 109(b)(1), the FCC should give minimal weight to the financial resources of the telecommunications carrier and the extent to which the design and development of the equipment, facilities or service was initiated before January 1, 1995. (NPRM, Paragraph 48.) Instead, the reasonable availability of technology and the implementation cost per affected switch should be given primary weight, in light of existing capital expense requirements resulting from normal technological evolution, legal and regulatory requirements imposed by the Telecommunications Act of 1996 and pending industry-wide issues such as Number Portability.

In addition to the described factors, the FCC should consider other factors such as the timeliness of standards; whether capacity requirements were made available in a timely manner; and whether sufficient installation and testing intervals were permitted to meet the applicable deadlines. (NPRM, Paragraph 48.)

It is imperative that the FCC preserve the true intent of CALEA by clarifying that "deployed", as used in CALEA, means that a particular switch

platform is commercially available, regardless of whether a carrier has actually installed it in the network. Any other interpretation would unfairly place most of the cost of CALEA implementation on carriers without reimbursement, rather than ensuring the equitable reimbursement of costs that Congress clearly intended.

Finally, the FCC should permit costs of all CALEA-related modifications that are found to be reasonably achievable, and thus not reimbursable by the Government, to be recovered through the normal rate making process. This should include both: (a) post-1/1/1995 deployments or installations, and (b) replacements, modifications and significant upgrades of pre-January, 1995 deployments.

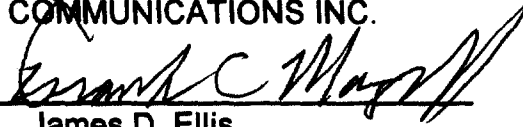
VII. Conclusion.

SBC is prepared to work with all concerned parties to accomplish orderly, cost-effective and fairly reimbursed implementation of CALEA. The FCC's rules will play a major role in the implementation process, and can have the effect either of facilitating or hindering its completion. SBC respectfully urges the Commission to give careful consideration to the recommendations contained in these Comments, which SBC believes would help ensure effectuation of the true intent and meaning of CALEA.

Respectfully submitted,

SBC COMMUNICATIONS INC.

By

A handwritten signature in black ink, appearing to read "Frank C. Magill", written over a horizontal line.

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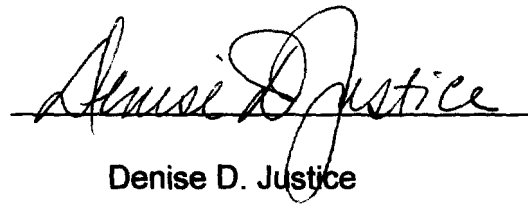
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December 12, 1997

CERTIFICATE OF SERVICE

I, Denise D. Justice, hereby certify that the foregoing Comments of SBC Communications Inc., have been served on December 12, 1997, to the Parties of Record.


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